

Commodity Futures Trading Commission

§ 4.10

(2) A transaction made in reliance on § 4.7 must comply with all applicable terms, conditions and requirements of § 4.7. Where an exemption is established only through reliance upon paragraph (e)(1) of this section, the failure to comply shall nonetheless be actionable by the Commission.

[65 FR 47854, Aug. 4, 2000, as amended at 67 FR 77411, Dec. 18, 2002; 68 FR 47231, Aug. 8, 2003; 71 FR 8942, Feb. 22, 2006; 72 FR 1662, Jan. 16, 2007; 74 FR 57590, Nov. 9, 2009; 75 FR 55428, Sept. 10, 2010; 77 FR 11284, Feb. 24, 2012; 77 FR 17329, Mar. 26, 2012; 77 FR 54358, Sept. 5, 2012; 78 FR 52333, Aug. 22, 2013]

§ 4.8 Exemption from certain requirements of rule 4.26 with respect to pools offered or sold in certain offerings exempt from registration under the Securities Act.

(a) Notwithstanding paragraph (d) of § 4.26 and subject to the conditions specified herein, the registered commodity pool operator of a pool offered or sold solely to “accredited investors” as defined in 17 CFR 230.501 in an offering exempt from the registration requirements of the Securities Act of 1933 pursuant to Rule 505 or 506 of Regulation D, 17 CFR 230.505 or 230.506, may solicit, accept and receive funds, securities and other property from prospective participants in that pool upon filing with the National Futures Association and providing to such participants the Disclosure Document for the pool.

(b) Notwithstanding paragraph (d) of § 4.26 and subject to the conditions specified herein, the registered commodity pool operator of a pool offered or sold in an offering exempt from the registration requirements of the Securities Act of 1933 pursuant to Rule 505 or 506 of Regulation D, 17 CFR 230.505 or 230.506, that is operated in compliance with, and has filed the notice required by § 4.12(b) may solicit, accept and receive funds, securities and other property from prospective participants in that pool upon filing with the National Futures Association and providing to such participants the Disclosure Document for the pool.

(c) The relief provided under § 4.8 is not available if an enforcement proceeding brought by the Commission under the Act or the regulations is pending against the commodity pool operator or any of its principals or if

the commodity pool operator or any of its principals is subject to any statutory disqualification under §§ 8a(2) or 8a(3) of the Act.

[57 FR 34865, Aug. 7, 1992; 57 FR 41173, Sept. 9, 1992, as amended at 60 FR 38182, July 25, 1995; 72 FR 1662, Jan. 16, 2007]

§ 4.9 [Reserved]

§ 4.10 Definitions.

For purposes of this part:

(a) [Reserved]

(b) *Net asset value* means total assets minus total liabilities, determined in accord with generally accepted accounting principles, with each position in a commodity interest accounted for at fair market value.

(c) *Participant* means any person that has any direct financial interest in a pool (e.g., a limited partner).

(d)(1) *Pool* means any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests.

(2) *Multi-advisor pool* means a pool in which:

(i) No commodity trading advisor is allocated or intended to be allocated more than twenty-five percent of the pool's funds available for commodity interest trading; and

(ii) No investee pool is allocated or intended to be allocated more than twenty-five percent of the pool's net asset value.

(3) *Principal-protected pool* means a pool (commonly referred to as a “guaranteed pool”) that is designed to limit the loss of the initial investment of its participants.

(4) *Investee pool* means any pool in which another pool or account participates or invests, e.g., as a limited partner thereof.

(5) *Major investee pool* means, with respect to a pool, any investee pool that is allocated or intended to be allocated at least ten percent of the net asset value of the pool.

(e)(1) *Principal*, when referring to a person that is a principal of a particular entity, shall have the same meaning as the term “principal” under § 3.1(a) of this chapter.

(2) *Trading principal* means:

(i) With respect to a commodity pool operator, a principal who participates